

REMARKS/ARGUMENTS

Claims 1-40 are pending. Claims 1, 4, 5, 29, 35-37 have been examined on the merits.

Applicants would like to thank the Examiner for the telephonic interview on March 23, 2004. The Examiner clarified that the species of waste treatment elected by Applicants (i.e., odor reducer and cross adapter), was limited to cross adapters and the odor reducer elected in the first species election (i.e., PAC). As such, claims 3, 7-28, 30-34 and 38-40 have been withdrawn as directed to nonelected inventions and species.

Rejection Under 35 U.S.C. §112

Claims 4, 29 and 35-37 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. The Office Action suggests that claim 29, which recites “a method for reducing animal waste malodor comprising using an effective amount of the composition of any one of claims 20-22 or 24”, reads as a composition claim. This position is nonsensical, as the claim clearly recites “a method for reducing animal waste malodor,” which would unmistakably be understood by a person skilled in the art as a method claim. However, for purposes of advancing prosecution, claim 29 has been amended, as suggested by the Examiner, to more clearly recite the claimed invention.

The Examiner suggests that claim 29 be amended to specify the compositions of claims 20-22 and 24 (and that the same amendment be presented for claims 35-37). However, there is no authority set forth for such a requirement. In fact, claims 29 and 35-37 are properly presented multiple dependent claims. Specifically, the aforementioned claims refer to preceding claims in the alternative and do not serve as the basis for any other multiple dependent claim, either directly or indirectly. *See MPEP* §608.01 (n). Accordingly, the basis for rejection under §112, second paragraph is improper. Applicants respectfully request reconsideration and withdrawal of the rejection.

Applicants thank the Examiner for withdrawal of the rejections under 35 U.S.C. §112, first paragraph, set forth in the previous Office Action of record.

Rejection Under 35 U.S.C. §102

A. The Pierce Reference

Claims 1, 5, 29, 35 and 36 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by Pierce et al., “Cross-Adaptation of Sweaty-Smelling 3-Methyl 2-Hexenoic Acid by Structurally-Similar, Pleasant Smelling Deodorant”, *Chem. Senses*, 1995, 20, pp. 401-411 (“Pierce reference”). As best understood, the Office Action suggests that the Pierce reference anticipates the present claims because it discusses the use of an ester of 3-methyl 2-hexenoic acid as “both odor-reducer and cross adapter.” (Sept. 2, 2003 Office Action at pages 2-3). The Examiner incorrectly asserts that the understanding of one skilled in the art of how “odor-reducer and cross adapter” is used in the Pierce reference trumps the definition accorded to the claim terms in the specification. As made of record in the previous response, each term is defined and exemplified in the specification, for example, on pages 5-6. The term “odor-reducing agents” is exemplified by powder activated carbon (PAC), bismuth compounds and CCC; “cross-adapting agents” includes, for example, the ethylesters of 3-methyl-2-hexenoic acid (3M2H) and their homologues.

The claims recite a cross-adapter **and** an odor-reducing agent. As discussed above, these claim terms are interpreted in view of the specification, and not by how one skilled in the art would understand the use of these terms in the Pierce reference. As such, the Pierce reference does not disclose or suggest an odor reducing agent, **as defined in the specification**, let alone the use of a cross-adapter **and** an odor reducing agent. Accordingly, the Pierce reference does not anticipate the claims.

Applicants respectfully request clarification of the following statement made in connection with the rejection in view of the Pierce reference under §102 : “. . . neither are the claims seen as identifying ‘effective amounts’ as to exactly what they are, what they do and/or what they are effective for – thus, met by the reference.” The rejection is unclear and Applicants are unsure as to the relevance of this statement with respect to the rejection under 35 U.S.C. §102(b) for alleged anticipation. Upon clarification, Applicants will respond accordingly.

B. The Schwartz Reference

Claims 1, 4, 29 and 35 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by GB 1,327,353 to Schwartz ("Schwartz reference"), or in the alternative, obvious in view of same under 35 U.S.C. §103. The Office Action asserts that example 3 of the Schwartz patent demonstrates methods of reducing waste malodor using effective amounts of odor reducing agents and cross adapting agents. Applicants traverse this rejection.

Example 3 of the Schwartz reference discusses application to kitty litter of a mixture of the following ingredients: hexamethylenetetramine, water, perfume, polyethylene oxide-alkylphenol adduct and alkyl dimethylbenzyl ammonium chloride. In support of the rejection, the Examiner has done nothing other than cite to an example setting forth this list of chemical compounds. This does not satisfy the Examiner's burden of establishing that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *MPEP* §2131; *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

As set forth above, Applicants have assigned specific definitions to each of the claim terms (*i.e.*, "cross-adapting agents" and "odor-reducing agents"). There is no evidence of record that the Schwartz reference discloses suggests cross-adapting agents or odor-reducing agents according to the present claims. In fact, none of the chemical compounds in example 3 of the Schwartz reference are "powder activated carbon, bismuth compounds, CCC (odor-reducing agents), ethylesters of 3-methyl-2-hexenoic acid or their homologues (cross-adapting agents). Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under sections 102 and 103.

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Conclusion

Applicants submit that the foregoing constitutes a *bona fide* attempt to advance prosecution. Should there be any questions, the undersigned invites the Examiner to contact her at the number below.

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